

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

THE LENDEL VINES COMPANY, INC.

PLAINTIFF

V.

CASE NO.:07-cv-2027

LIBERTY MUTUAL INSURANCE CO.

DEFENDANT

**RESPONSE TO MOTION TO DISMISS AMENDED COMPLAINT OR IN
ALTERNATIVE, MOTION TO STRIKE JURY DEMAND**

Comes now the Plaintiff, Lendel Vines Company Inc. ("Lendel Vines"), and for its Response to the defendants Motion, alleges and states as follows:

1. This matter is currently set for trial the week of December 4, 2007.
2. The defendant did not file a responsive pleading until April 6, 2007.
3. As of the date of this filing, the Rule 26(f) conference has not yet taken place.
4. As of the date of this filing the defendant has not even attempted to propound any discovery whatsoever upon the plaintiff.
5. The defendant cannot provide this Court with any evidence of prejudice by allowing the plaintiff to amend its Complaint and request a jury trial this early in the litigation.
6. The defendant states in its Brief in Support that it was prejudiced by the plaintiff filing its Amended Complaint without leave of the Court, thus, preventing the defendant from objecting to the filing of the Amended Complaint, while at the same time the defendant alleges in its Motion that the Amended Complaint does "not assert new claims or causes of action and did not insert additional parties to the action."
6. Respectfully, the plaintiff has already filed its Motion for Leave to File its Amended Complaint before this Response was filed.

7. Under Arkansas law the right to a jury trial shall remain inviolate.
8. A written Brief is filed herein in support of this motion.

WHEREFORE, Plaintiff, Lendel Vines, Inc. prays for that the defendant's, Liberty Mutual Insurance Company, Motion to Dismiss Amended Complaint or, in the Alternative, to Strike Jury Demand be dismissed, and such other and further relief as the Court deems just and proper.

Respectfully Submitted,

By: /s/ J.R. Carroll
J.R. Carroll #2003149
DAVIS, WRIGHT, CLARK, BUTT
& CARITHERS, PLC
P.O. Box 1688
19 E. Mountain Street
Fayetteville, AR 72702-1688
(479) 521-7600
jrcarroll@daviswrightlaw.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send notification of such filing to the following: Reed R. Edwards and David B. Vandergriff.

By: /s/ J.R. Carroll